IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

RCRev..No. 396 of 2005()

RCA.140/2003 of VI ADDL.DISTRICT COURT, ERNAKULAM
RCP.87/2002 of I ADDL.M.C.,ERNAKULAM
.....

: REVN.PTNRS./RSPDT.& LEGAL HEIRS OF DECEASED TENANT
---

1. P.C. VELAYUDHAN (DIED),
VASISTHALAYAM, OIL RAILWAY STATION ROAD,
ERNAKULAM, KOCHI-18.

2. P.V. MOHANDAS, S/O. LATE VELAYUDHAN,
VASISHTALAYAM, OLD RAILWAY STATION RAOD,
ERNAKULAM, KOCHI-18.

3. P.V. HARIDAS, S/O. LATE VELAYUDHAN,
VASISHTALAYAM, OLD RAILWAY STATION ROAD,
ERNAKULAM, KOCHI-18.

BY ADV. SMT.V.P.SEEMANDINI
SRI.M.S.UNNIKRISHNAN

RESPONDENTS: APLNT.& L.RS.OF DECEASED TENANT/PTNRS.& L.RS OF
---

1. P.M. JOSEPH, S/O.MATHEW POOTHULLIL,
AGED 27 YEARS, THIRUNARAYANA AVENUE,
OFF NEW AVADY ROAD, KILPAUK GARDEN,
CHENNAI-600 010.

2. LEELA, W/O. LATE VELAYUDHAN,
VASISHTALAYAM, OLD RAILWAY STATION ROAD,
ERNAKULAM, KOCHI-18.

3. P.V. KALADHARAN, S/O. LATE VELAYUDHAN,
VASISHTALAYAM, OLD RAILWAY STATION ROAD,
ERNAKULAM, KOCHI-18.

4. DR. P.V. UNNIKRISHNAN,
S/O. LATE VELAYUDHAN, VASISHTALAYAM,
OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHI-18.

5. P.V. RADHA, D/O. LATE VELAYUDHAN,
VASISHTALAYAM, OLD RAILWAY STATION ROAD,ERNAKULAM.

6. P.V. GEETHA, D/O. LATE VELAYUDHAN,
VASISHTALAYAM, OLD RAILWAY STATION ROAD,
ERNAKULAM, KOCHI-18.

BY ADV. SRI.V.M.KURIAN
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 23/6/2006, THE COURT ON 9/11/2006 PASSED THE FOLLOWING:

M. RAMACHANDRAN & A.K. BASHEER, JJ.

- - - - - - - - - - - - - - - - - - -

R.C.R.NO.396 OF 2005

- - - - - - - - - - - - - - - - - - -

DATED THIS THE 9TH DAY OF NOVEMBER, 2006.

O R D E R

Basheer, J.

Is the tenant liable to pay interest on the arrears of fair rent from the date of his re-induction into the reconstructed building or does the liability arise only from the date when the fair rent is fixed by the court?

2. When the above contentious issue came up for consideration, the Rent Control court held that the tenant would be liable to pay interest on the arrears only from the date of fixation of fair rent. However, the Rent Control Appellate Authority took the view that the landlord was entitled to get interest from the date of reinduction itself. The above order passed by the appellate authority is under challenge, at the instance of the tenant, in this revision petition filed under Section 20 of the Kerala Buildings (Lease & Rent Control) Act, 1965 (for short 'the Act').

2. It is not in dispute that the building was reconstructed at the intervention of the Rent Control Court under Section 11(4)(iv) of the Act. At the time of reinduction, the landlord demanded Rs.6,000/- per month from the tenant as fair rent. But the tenant offered Rs.2,000/- per month, till the fair rent was fixed by the court as contemplated under the third proviso to Section 11(4)(iv) of the Act.

3. It is the admitted position that the tenant was put in possession of the

reconstructed building even before the fair rent was fixed. The landlord had preferred an application for fixation of fair rent before the Rent Control Court in 1986 immediately after reinducting the tenant. By order dated March 27, 1991 the court fixed the fair rent at Rs.4,200/- per month. The said order was ultimately confirmed by the revisional authority.

4. It is the common case of the parties that the tenant had been remitting the rent at the rate of Rs.2,000/- from the date of his reinduction, viz. January 27, 1986. After fixation of fair rent, the landlord filed a petition for eviction under Section 11(2)(b) of the Act alleging that the tenant had failed to pay the rent at the rate of Rs.4,200/- per month as fixed by the court with interest thereon from the date of his reinduction, viz. January 27, 1986. The Rent Control Court allowed the petition and held that the landlord was entitled to get the arrears of rent at the rate of Rs.4,200/- with effect from January 27, 1986 . But it took the view that interest at the rate of 6% was payable only from the date on which the court had passed the order fixing the fair rent.

5. The landlord challenged the above order of the Rent Control Court before the appellate authority contending that the tenant was liable to pay interest on the arrears of rent from the date of reinduction itself. The appellate authority accepted the said contention and reversed the order of the Rent Control Court. The order of the appellate authority is challenged by the tenant in this revision petition.

6. It is contended by the learned counsel for the petitioner/tenant that his liability to pay interest on the arrears would arise only from the date on which the

fair rent was fixed and not from the date of reinduction, since at that time the rate of rent was not determined.

7. As mentioned earlier, the tenant had agreed to pay rent at the rate of Rs.2,000/- per month as against the demand of Rs.6,000/- made by the landlord. It is true that the landlord had filed the petition for fixation of fair rent in the year 1986 itself. But the court passed final order in the case only on March 27, 1991 by which the tenant was directed to pay rent at the rate of Rs.4,200/- .

8. It is contended by the tenant that he would be liable to pay interest only if he had committed any default in remitting the rent. The court fixed the fair rent only on March 27, 1991 and therefore he could not have been treated as a defaulter, right from the date of his reinduction. Though he was bound to pay rent at the revised rate from the date of his reinduction, the liability to pay interest cannot be fastened on him as though he had committed default in payment.

9. But it is contended by the learned counsel for the respondents/landlords that once the tenant was found liable to pay fair rent from the date of his reinduction, he cannot escape from the liability to pay interest from that date itself. The Rent Control Court was therefore not justified in holding that the tenant was liable to pay interest only from the date of the order by which the fair rent was fixed. It is thus contended by the landlords that the appellate authority was justified in modifying the order of the Rent Control Court appropriately.

10. Section 11(2)(b) of the Act postulates that if the Rent Control Court, after giving the tenant a reasonable opportunity of showing cause against the application for eviction, is satisfied that the tenant has not paid or tendered the rent

due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable, it shall make an order directing the tenant to put the landlord in possession of the building, and if it is not satisfied, it shall make an order rejecting the application thereof by him. The proviso to the above clause stipulates that an application by a landlord for eviction under Section 11(2)(b) shall be made only if the landlord has sent a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at six per cent per annum and postal charges incurred in sending the notice within fifteen days of receipt of the notice or of the refusal thereof.

11. As has been noticed earlier, the fair rent was fixed only on March 27, 1991. Of course the tenant has accepted the position that he is liable to pay the fair rent with effect from January 27, 1986, the date on which he was put in possession of the building after reconstruction. But can it be said that the tenant had failed "to pay or tender the rent due by him" from January 1986 itself? The answer can only be an emphatic 'no', since obviously the rate of rent was not fixed at that point of time. Undoubtedly the tenant would be liable to pay interest on the arrears of rent calculated at the rate of Rs.2,000/- per month, if there had been default prior to March 27, 1991.

12. In this context, it may be noticed that the tenant had been paying the rent at the rate of Rs.2000/- from the date of his reinduction in 1986. The landlord had claimed the difference in the rent after fixation of fair rent in the petition filed

by him under Section 11(2)(b) of the Act. The default in payment of rent can be said to have occurred only if the tenant failed to pay the rent at the revised rate, after March 27, 1991. Therefore, the Rent Control Court, in our view, was justified in holding that the tenant was liable to pay interest only with effect from the date of order of fixation of fair rent. Equity and justice also demanded that the tenant was made liable to pay interest only from the date of order since the delay in culmination of the proceedings in the court cannot be attributed to the tenant. Of course, the landlord has been given the right to collect rent at the revised rate from the date of reinduction of the tenant. That does not mean that the tenant can be mulcted with the liability to pay interest retrospectively on the basis of "a deemed or fictional default". Therefore, we are satisfied that equities had been balanced in a fair and just manner in the order passed by the Rent Control Court.

In the above facts and circumstances, the order passed by the Rent Control Appellate Authority is set aside. The revision petition is allowed.

(M.Ramachandran, Judge.)

(A.K. Basheer, Judge.)

kav/